

## Comptroller of the Currency, Treasury

## § 16.15

Commission Rule 12g3-2(b) need not incorporate that information by reference into the offering document provided to purchasers pursuant to paragraph (a)(5) of this section. However, the federal branch or agency must make that information available to the potential purchasers upon request. The OCC will make the information available for public inspection.

### § 16.7 Nonpublic offerings.

(a) The OCC will deem offers and sales of bank issued securities that meet all of the following requirements to be exempt from the registration and prospectus requirements of § 16.3 pursuant to § 16.5(c) of this part:

(1) All the securities are offered and sold in a transaction that satisfies the requirements of Commission Regulation D (17 CFR part 230, Regulation D—Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933);

(2) Each purchaser who is not an accredited investor either alone or with its purchaser representative(s) has the knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment, or the issuer reasonably believes immediately prior to making any sale that the purchaser comes within this description; and

(3) A notice that meets the requirements of Commission Rule 503 (17 CFR 230.503) is filed with the OCC.

(b) All subsequent sales of bank issued securities subject to the limitations on resale of Commission Regulation D (17 CFR part 230, Regulation D—Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933) must be made pursuant to Commission Rule 144 (17 CFR 230.144), Commission Rule 144A (17 CFR 230.144A), another exemption from registration under the Securities Act referenced in § 16.5 of this part, or in accordance with the registration and prospectus requirements of § 16.3 of this part.

(c) No offer or sale of bank issued securities shall be made in reliance on Commission Regulation D (17 CFR part 230, Regulation D—Rules Governing the Limited Offer and Sale of Securities

Without Registration Under the Securities Act of 1933) without compliance with paragraphs (a)(1) and (a)(2) of this section.

### § 16.8 Small issues.

(a) The OCC will deem offers and sales of bank issued securities that satisfy the requirements of Commission Regulation A (17 CFR part 230, Regulation A—Conditional Small Issues Exemption) to be exempt from the registration and prospectus requirements of § 16.3 pursuant to § 16.5(d) of this part.

(b) A filer should consult the Commission's Securities Act Industry Guide 3—Statistical Disclosure by Bank Holding Companies (17 CFR 229.801(c) and 231) and requirement 7 (Loans) of Rule 9-03 of Commission Regulation S-X (17 CFR 230.9-03) for guidance on appropriate disclosures when preparing offering documents to be filed with the OCC pursuant to Regulation A.

### § 16.15 Form and content.

(a) Any registration statement filed pursuant to this part must be on the form for registration (17 CFR part 239) that the bank would be eligible to use were it required to register the securities under the Securities Act and must meet the requirements of the Commission regulations referred to in the applicable form for registration. A filer should consult the Commission's Securities Act Industry Guide 3—Statistical Disclosure by Bank Holding Companies (17 CFR 229.801(c) and 231) for guidance on appropriate disclosures when preparing registration statements.

(b) Any registration statement or amendment filed pursuant to this part must comply with the requirements of Commission Regulation C (17 CFR part 230, Regulation C—Registration), except to the extent those requirements conflict with specific requirements of this part.

(c) In addition to the information expressly required to be included in the registration statement by paragraphs (a) and (b) of this section, the registration statement must include any additional material information that is necessary to make the required statements, in light of the circumstances